IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 148 of 2007
and M.P.No.1 of 2007

N. Thirunavukkarasu ... Appellant

-vs-

1.The District Collector
Thanjavur.

2.The Special Tahsildar
Land Acquisition (Adi Dravidar Welfare)
Tiruvaiyaru.

3.The District Adi Dravidar
Welfare Officer, Thanjavur. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated made in W.P.No.667 of 1999 dated 03.02.2006 the Writ Petition No.667 of 1999 presented under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records comprised in the proceedings of the 1st respondent dated 16.10.1998 in Na.Ka.No.20991/97/M1 as published in the District Gazettee Tanhavur dated 22.10.1998 in respect of the lands belonging to the petitioner bearing S.No.486/1A measuring 0.57.0 hectares in Thiruvaiyaru West Village, Thiruvaiyaru Taluk, Tanhavur District.

For appellant :: Mr. T. Ravichandran
for Mr. Satish Parasaran
For respondents :: Mr. Raja Kalifulla
Government Pleader

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JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

The appellant has filed the writ petition in W.P.No.667 of 1999, challenging the proceedings of the District Collector, Thanjavur, dated 16.10.1998, passed by virtue of the powers conferred under Section 4 (1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (in short, "the Act"), deciding to acquire the land belonging to

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the petitioner bearing Survey No.486/1A, measuring an extent of 0.57.0 hectares in Thiruvaiyaru West Village, Thiruvaiyaru Taluk, Thanjavur District, contending interalia that he being the owner, was not given an opportunity to submit his objections and also copy of the report submitted by the enquiring of the Collector, has not been furnished. The learned single Judge has dismissed the writ petition, holding that in respect of the acquisition, award was passed as early as on 29.12.1998, while the writ petition came to be filed only afterwards, viz., on 12.01.1999. It is, as against the said order dismissing the writ petition, present appeal is filed.

2. We have heard the learned counsel for the appellant as well as the learned Government Pleader for the respondents.

3. It was the submission of the appellant that no opportunity was given to him to file his objections, and therefore, the procedure contemplated under the Act has been violated. The learned Government Pleader was directed to produce entire records relating to the acquisition proceedings. Accordingly, the learned Government Pleader has produced the same. On perusal of the file, the following facts are revealed:

> "(i) The notice as required under Section 4(2) of the Act read with Rule 3(i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 (in short, "the Rules") in Form No.I was issued by the second respondent, Special Tahsildar, Land Acquisition (Adi Dravidar Welfare), Thiruvaiyaru, on 30.01.1998, and the same was served on the appellant on 31.01.1998;
>
> (ii) After receiving the said notice, the appellant, by his letter dated 16.02.1998, submitted his objections;
>
> (iii) Thereafter, the second respondent, Special Tahsildar, Land Acquisition (Adi Dravidar Welfare), Thiruvaiyaru, has submitted a report dated 09.03.1998, to the Collector, as per Section 4(3)(b) of the Act, containing his recommendations;
>
> (iv) The District Collector, viz., the first respondent, has passed order dated 16.10.1998 under Section 4(1) of the Act, having satisfied that it is necessary to acquire the land in question for the purpose of Harijan Welfare Schemes;
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> (v) The said notification has been published in the District Gazette on 22.10.1998;
>
> (vi) The enquiry notice in Form No.III, for determining the compensation amount was issued on 09.11.1998;
>
> (vii) The petitioner has submitted his objections on 26.11.1998; and
>
> (viii) The award was passed on 29.12.1998.

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4. Admittedly, the writ petition came to be filed on 12.01.1999. The objections submitted by the appellant both on 16.02.1998 and on 26.11.1998, is that he was not having any other land other than the land sought to be acquired, of course, also disputing the quantum.

5. It is admitted that the appellant has given objections after notice of proposal of acquisition under Section 4(2) and also after the final notification issued under Section 4(1) of the Act, viz., on 09.11.1998, objecting to the quantum of compensation. The only objection raised by the appellant in this appeal is that the enquiry report dated 09.03.1998, submitted by the second respondent, Special Tahsildar, Land Acquisition (Adi Dravidar Welfare), Thiruvaiyaru, to the District Collector has not been served, calling upon him to submit his objections. In this regard, it is relevant to point out that, in cases where other than the District Collector, any other officer authorised by him has conducted enquiry pursuant to the notice issued under Section 4 (2) of the Act, the said officer shall submit a report to the Collector along with his recommendations and it is, after considering the said report, the District Collector should pass final order under Section 4 (1) of the Act. In this regard, it is relevant to extract Section 4(3) of the Act, which states as follows:

> "4. Power to acquire land.-
> (1) ....
> (2)...
> (3)(a) the District Collector may, where he has himself called upon he owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;
> (b) Where any officer authorised by the District Collector has called upon the owner of other person to show cause under sub section(2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report, the District Collector may pass such orders as he may deem fit."

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6. In this case, it is not in dispute that the District Collector has in fact considered the report of the second respondent, Special Tahsildar, Land Acquisition (Adi Dravidar Welfare), Thiruvaiyaru, dated 09.03.1998, as it is referred to in the impugned order itself. The only fact that remains to be considered is, as to whether the appellant was entitled to a copy of the report filed by the Special Tahsildar, Land Acquisition (Adi Dravidar Welfare), Thiruvaiyaru, to enable him to file his reply, to enable, the District Collector to pass orders. It is, to substantiate the said contention, the learned counsel for the appellant has relied upon the Full Bench judgement of this Court rendered in R. Pari vs. The Special Tahsildar, Adi Dravidar Welfare, Devakkottai and another reported in 2006 (3) Law

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Weekly 1000. While dealing with the above said aspect, it is true, that the Full Bench has concluded that the report or recommendations of the authorised officer should be furnished to the owner and the owner must be given two weeks time to make his further representation before the District Collector, however, holding that the District Collector, need not conduct any further personal hearing. However, the Full Bench in categorical terms held that, mere non-furnishing of copy of the report would not have the ipso-facto effect of vitiating the acquisition proceedings. The same has to be considered on the point of prejudice that may be caused to the land owner in not furnishing the copy of such report of the authorised officer, based on the facts and circumstances of each case. In this regard, the Full Bench has laid down the law as follows.

> "37. The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the court in each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of the authorised officer. If any particular aspect has been highlighted by the land owner and has not been considered by the authorised officer, the land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the authorised officer has considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the land owner, have been ignored by the authorised officer, it may be reasonable to infer non-furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is

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sufficient to quash such acquisition. Ultimately the court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in particular case."

7. Applying the law laid down as stated above to the facts and circumstances of the case and especially in the face of the nature of objections raised by the appellant in respect of proposal for acquisition on 16.02.1998 and also in respect of compensation on 09.11.1998, we are of the view that by non-furnishing the copy of the report, no prejudice has in fact been caused to the petitioner. In view of the same, even on merits of the case, the appeal fails and the same deserves to be dismissed. Accordingly, the appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Collector
Thanjavur.

2.The Special Tahsildar
Land Acquisition (Adi Dravidar Welfare)
Tiruvaiyaru.

3.The District Adi Dravidar
Welfare Officer, Thanjavur.

2 cc To The Government Pleader, SR.31804, 32194.

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